DOCUMENT RESUME

ED 469 442 EC 309 223

AUTHOR	Douvanis, Gus; Hulsey, David
TITLE	The Least Restrictive Environment Mandate: How Has It Been Defined by the Courts? ERIC Digest.
INSTITUTION	ERIC Clearinghouse on Disabilities and Gifted Education, Arlington, VA.
SPONS AGENCY	Office of Educational Research and Improvement (ED), Washington, DC.
REPORT NO	EDO-EC-07
PUB DATE	2002-08-00
NOTE	4p.; Digest number E629.
CONTRACT	ED-99-CO-0026
AVAILABLE FROM	ERIC Clearinghouse on Disabilities and Gifted Education, Council for Exceptional Children, 1110 North Glebe Rd., Arlington, VA 22201-5709. Tel: 800-328-0272 (Toll Free); Fax: 703-620-2521; e-mail: ericec@cec.sped.org; Web site: http://www.ericec.org. For full text: http://ericec.org/digests/prodfly.html.
PUB TYPE	ERIC Publications (071) -- ERIC Digests in Full Text (073)
EDRS PRICE	EDRS Price MF01/PC01 Plus Postage.
DESCRIPTORS	*Compliance (Legal); *Court Litigation; Definitions; *Disabilities; *Educational Legislation; Elementary Secondary Education; Federal Legislation; *Inclusive Schools; Mainstreaming
IDENTIFIERS	ERIC Digests; *Individuals with Disabilities Education Act

ABSTRACT

This digest examines how the concepts of least restrictive environment, mainstreaming, and inclusion have been developed by Congress and the courts. An introductory discussion of the Individuals with Disabilities Education Act (IDEA) notes that Congress did not define the concept of least restrictive environment, but left it to the courts to shape a definition. A court definition of mainstreaming is provided. The paper then presents brief abstracts of Circuit Court cases that have helped to shape these concepts. The court cases are: Roncker v. Walter, (1983); Daniel R.R. v. State Board of Education (1989); Greer v. Rome (1991); Oberti v. Clementon (1993); Sacramento v. Rachel H. (1994); Light v. Parkway (1994); Clyde K. v. Puyallup (1997); Hartmann v. Loudoun (1997); Hudson v. Bloomfield Hills (1997); and Doe v. Arlington County (1999). Each case is referenced to the Federal Reporter or the Federal Supplement. (DB)

Reproductions supplied by EDRS are the best that can be made
from the original document.

ED 469 442

The Least Restrictive Environment Mandate: How Has It Been Defined by the Courts?

ERIC Digest

By

Gus Douvanis and David Hulsey

August 2002 EDO-EC-07

ERIC Clearinghouse on Disabilities and Gifted Education

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES
INFORMATION CENTER (ERIC)

- ☐ This document has been reproduced as received from the person or organization originating it.
- ☐ Minor changes have been made to improve reproduction quality.

- Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

BEST COPY AVAILABLE

EC 309 223

ERIC Clearinghouse on Disabilities and Gifted Education
1110 North Glebe Road, Arlington, Virginia 22201-5704
1-800-328-0272 ericec@cec.sped.org http://ericec.org

Digest
E629

EDO-EC-07

August 2002

The Least Restrictive Environment Mandate: How Has It Been Defined by the Courts?

Gus Douvanis and David Hulsey

To the maximum extent appropriate, children with disabilities ... should be educated with children who are not disabled, and ... special classes, separate schooling, or other removal of children with disabilities from the regular educational environment should occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. 1412(a)(5)(B)

In 1972, there were eight million children with disabilities in the United States, and fully one-half were receiving no educational services. Students were being evaluated for suspected disabilities without notice to parents or due process; parents were able to exclude their children from compulsory attendance regulations; and many children with disabilities who were in schools were being excluded from any meaningful educational services. The Pennsylvania State Court took note of these facts in *Pennsylvania Association of Retarded Citizens (PARC) v. Commonwealth of Pennsylvania* (1972). This ruling created the right to an education for disabled Pennsylvania children and expressed a clear preference for mainstreaming, with homebound instruction or residential placements used in only the most rare circumstances. Mainstreaming to the maximum extent appropriate was adopted by the US Congress when it enacted the Education of All Handicapped Children Act of 1975 (P.L. 94-142), the precursor to the Individuals with Disabilities Education Act (IDEA). However, P. L. 94-142 did not "define" the least restrictive environment (LRE), nor did it use the term "mainstreaming."

The law that governs special education is derived from different sources. The first source is statute law, which is enacted by legislatures—in the case of special education, the IDEA. The second source of law is case law or judge-made law. It is the right and duty of the courts to interpret statutory law and discern the meaning the legislators intended. This can cause problems in several ways. First, the courts may interpret the law in a manner contrary to what the legislature meant, in effect creating new laws. Second, different courts may interpret the same law differently, so the law that governs you is determined by where you happen to live. These situations are extremely evident in defining the LRE. It is also important to understand that the US Supreme Court has refused to hear any appeals on this issue, leading to a situation where the LRE considered appropriate for a student may vary depending on the interpretation of the law of the court of highest jurisdiction in his or her geographical area.

This digest examines how the concepts of least restrictive environment, mainstreaming, and inclusion have been developed by Congress and the courts. Because Congress has elected not to define the concept of LRE, under our system of government it is left to the courts to shape a definition. There are varying definitions of what constitutes compliance with the least restrictive environment mandate and the concepts of mainstreaming and inclusion. Further complicating the issue is that people frequently use the terms least restrictive environment, inclusion, and mainstreaming interchangeably when they are, in fact, not synonymous concepts.

The concept of the least restrictive environment refers to the IDEA's mandate that children with disabilities be educated to the maximum extent appropriate with nondisabled peers. Inclusion contemplates the placement of students with disabilities in the regular classroom with nondisabled students as a right and implies that the right is an absolute. Mainstreaming implies that the child will be educated with nondisabled peers when appropriate, but not necessarily exclusively in general education. In an attempt to define mainstreaming, the Fourth Circuit Court of Appeals stated:

> *Under the IDEA, mainstreaming is a policy to be pursued so long as it is consistent with the Act's primary goal of providing disabled students with an appropriate education. Where necessary for educational reasons, mainstreaming students assumes a subordinate role in formulating an educational program.*

Following are abstracts of some of the more important cases that helped to shape these concepts:

Roncker v. Walter, 700 F.2d 1058 (6th Cir. 1983). The court developed the following two-part test to guide the appropriate placement for a student with a disability: (1) Can the educational services that make the segregated setting superior be feasibly provided in a nonsegregated setting? (If so, the segregated placement is inappropriate.) (2) Is the student being mainstreamed to the maximum extent appropriate? (Standard in KY, MI, OH, & TN).

Daniel R.R. v. State Board of Education, 874 F.2d 1036 (5th Cir. 1989). This court, relying on Roncker, also developed a two-part test for determining if the LRE requirement is met. The test poses two questions: (1) Can an appropriate education in the general education classroom with the use of supplementary aids and services be achieved satisfactorily? (2) If a student is placed in a more restrictive setting, is the student "integrated" to the "maximum extent appropriate"? (Standard in AL, DE, GA, FL, LA, MS, NJ, PA, TX).

Greer v. Rome, 950 F.2d 688 (11th Cir. 1991). In this case Christy Greer, who had an IQ of 40, was to be placed in a self-contained kindergarten classroom. The parents objected, arguing that the appropriate placement should have been in a classroom at her neighborhood school. In finding for Christy and her parents, the court determined that the school had failed to consider any less restrictive setting prior to making the decision for a self-contained environment. From this case, the concept of the "continuum of placement

options" was developed. Before moving down the continuum to a more restrictive placement, the IEP committee must at least consider, discuss, and justify not placing a student in the general education classroom.

Oberti v. Clementon, 995 F.2d 1204 (3rd Cir. 1993). This is the case that begins the change from the IDEA's "mainstreaming" approach to the concept of "inclusion." Clearly, inclusion is judge-made law, not legislative action. Rafael Oberti was an autistic student who was disruptive in his general classroom placement, and the school wanted to move him to a more restrictive placement. The court held that "inclusion is a 'right,' not a privilege for a select few. Success in special schools and special classes does not lead to successful functioning in integrated society, which is clearly one of the goals of the IDEA." Remember that the word "inclusion" did not appear in the IDEA; it is a judge-made law.

Sacramento v. Rachel H. 14 F.3d 1398 (9th Cir. 1994). Rachel Holland was a third-grade student with an IQ of 44. Her parents argued that with appropriate aids and services, she could be educated in the general classroom. The court ruled that in determining the appropriate placement, the educational benefits of the general education classroom with supplemental aids and services must be compared to the educational benefits of the special classroom. The nonacademic benefits of interaction with nondisabled students also must be considered. Further, the effect of the student's presence on the teacher and on other students must be evaluated. This three-pronged test is often called the Holland test.This case is the high-water mark of the inclusion movement. (Standard in AS, AR, CA, HI, ID, MT, NV, OR, & WA).

Light v. Parkway 41 F.3rd 1223 (8th Cir. 1994). Lauren Light was "violent, dangerous, and disruptive" in her general classroom placement. Her school behavior included 30 incidents of violence that caused her classmates to seek medical attention from the school nurse. In rejecting the parents' request for a "stay-put" and a return to the general classroom, the court held, "A student who is violent, dangerous, and disruptive of the education of others is never properly placed in a regular classroom setting." This case marked a turn in the judicial belief that inclusion is a right. Further, the court indicated that all of the circumstances surrounding a student must be taken into account when determining the proper placement. For some students, a general classroom may not be appropriate even with aids and services.

Clyde K. v. Puyallup 35 F.3d 1396 (9th Cir. 1997). Applying the Holland test, the court found that the student was not receiving academic benefits in the general education classroom and actually had regressed academically. Although appropriate aids and services had been provided, the student was socially isolated and therefore nonacademic benefits were minimal. The court acknowledged that the student's presence in the classroom had negative effects on the teacher and the student's peers. The language of the court's decision included the statement, "Disruptive behavior that significantly impairs the education of others strongly suggests a mainstream placement is no longer appropriate."

Hartmann v. Loudoun, 118 F. 3d 996 (1997). Mark Hartmann was an 11-year old who had autism and disruptive behavior. His IEP team found that he was making no academic progress in the regular classroom and proposed moving him to a smaller class specifically structured for students who had autism. His parents argued that his placement would violate IDEA's LRE provision. A lower court decision in the parents' favor was reversed. Hartmann is important because of the court's admonishment of the lower court for substituting its judgment for that of educators. In rendering its decision, the court held for the following: (1) Mainstreaming is not required when a student with a disability will not receive an educational benefit from it. (2) Any marginal benefit from mainstreaming would be outweighed by benefits that could only be obtained in a separate educational setting; (3) A determination of whether the student is a disruptive force in the general education classroom is a legitimate issue; and (4) Any IDEA preference for mainstreaming is only that, and the receipt of social benefits is a subordinate goal to receiving educational benefits. (Standard in MD, NC, SC, VA, & WV).

Hudson v. Bloomfield Hills, 108 F.3d 112 (6th Cir. 1997). This court upheld the school's decision to place a 14-year-old girl in special education with an emphasis on "life skills" rather than the parent's preference for a general education placement. The court said that the appropriate purpose of her education was to give her the skills she needed to "function as an independent woman in society." In the judgment of the court, the student was not receiving those skills in her general classroom placement.

Doe v. Arlington County, 41 F.Supp. 599 (ED. Va. 1999). The court upheld a segregated setting with some mainstreaming for a 10-year-old with mental retardation and ADHD rather than the full-inclusion program the parents advocated. The court found a lack of meaningful educational benefits in the general classroom setting.

From these most recent cases, it is possible to see that the courts are moving away from defining the LRE as an inclusive placement as a matter of right and a matter of law. Rather, the courts seem to be defining least restrictive environment in accordance with the language of the IDEA—namely, that students with disabilities should be educated with their nondisabled peers to the maximum extent appropriate.

***Gus Douvanis, J.D., Ed.D.,** is University Advisor for Legal Services and Associate Professor of Educational Leadership at the University of West Georgia, Carrollton Georgia.*

***David Hulsey, Ph.D.,** is Assistant Professor of Educational Leadership at the University of West Georgia, where he teaches Administration of Special Education.*

How to Find the Court Cases in This Digest

Cases in this digest are referenced to the *Federal Reporter* or the *Federal Supplement*, both published by the West Publishing Company. For example, Oberti v. Clementon 995 F.2nd 1204 (3rd Cir. 1993) would be found in the *Federal Reporter, Second Series* (F.2nd), volume 995, page 1204. The case was decided by the Third Circuit Court of Appeals in 1993. The case of Doe v. Arlington County, 41 F.Supp. 599 (ED.Va. 1999) is reported in the *Federal Supplement*, volume 41, page 599. The case was decided by a district court in Virginia in 1999. For further information on finding court cases, see Rothstein, L. F. (1995). Special education law (2nd ed.). White Plains, NY: Longman Publishers.

ERIC Digests are in the public domain and may be freely reproduced and disseminated, but please acknowledge your source. This digest was prepared with funding from the Office of Educational Research and Improvement (OERI), U.S. Department of Education, under Contract No. ED-99-C0-0026. The opinions expressed in this publication do not necessarily reflect the positions of OERI or the Department of Education.

U.S. Department of Education
Office of Educational Research and Improvement (OERI)
National Library of Education (NLE)
Educational Resources Information Center (ERIC)

NOTICE

Reproduction Basis

	This document is covered by a signed "Reproduction Release (Blanket)" form (on file within the ERIC system), encompassing all or classes of documents from its source organization and, therefore, does not require a "Specific Document" Release form.
X	This document is Federally-funded, or carries its own permission to reproduce, or is otherwise in the public domain and, therefore, may be reproduced by ERIC without a signed Reproduction Release form (either "Specific Document" or "Blanket").